

OUTREACH

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VISION

MUNICIPAL IMPLEMENTATION TOOL # 9 :
INCLUSIONARY ZONING



Delaware Valley Regional
Planning Commission

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Across the Delaware Valley, towns and suburbs are experiencing heightened market-rate development and residential growth, bringing along exciting benefits, but also new challenges. As housing prices rise, seniors on fixed incomes, first-time homebuyers, young families, and renters may find a shortage of residential options they can afford. Population growth means a demand for new businesses and local services. Teachers, municipal workers, and service employees—required to sustain a growing community—need housing options within their means, located close to their place of work. Since the 1970s, over 200 urban and suburban municipalities have successfully dealt with these challenges through inclusionary zoning.

Inclusionary zoning is a tool that allows municipalities to work with the private sector to build a long-term stock of affordable housing at little expense to taxpayers. It takes the form of either a mandatory or a voluntary (opt-in) ordinance, in which private developers incorporate a certain percentage of affordable units, in exchange for non-monetary entitlements from the municipality, such as density bonuses, fee waivers, and relaxed parking restrictions. Inclusionary zoning is a flexible tool that can take many forms in order to address the specific needs of a residential population, local

zoning regulations, and development climate. The legality of inclusionary zoning has been consistently upheld by the courts, and it has proven to be a sound strategy for providing mixed-income housing through cooperation with the private sector, without substantially altering the value of a developer's equity.

Why Does DVRPC Care About Inclusionary Zoning?

This brochure is part of a series published by the Delaware Valley Regional Planning Commission (DVRPC) in support of the region's adopted long-range plan, *Destination 2030*. The Plan provides an integrated land-use and transportation vision for the region's growth and development through the year 2030. It specifically seeks to encourage core-city revitalization, stabilization of older townships and boroughs, growth management in growing suburbs, and preservation of rural communities and natural areas. In Pennsylvania and New Jersey, townships, boroughs, and cities have the primary authority and responsibility to implement these policies. These brochures introduce local officials and citizens to planning tools that may be useful in their communities, and provide some options for local action.

Successful inclusionary zoning can provide important economic and community benefits for municipalities.

Inclusionary zoning:

- Creates a long-term stock of affordable housing and encourages a diversity of housing types
- Creates residential opportunities for people on fixed incomes
- Provides financial mechanisms for subsidizing first-time and moderate-income home buyers
- Develops an infrastructure to sustain the service-sector jobs that support residential growth
- Creates public-private cooperation, relieving taxpayers of the burden of paying for affordable housing
- Creates entitlements for developers to make a reasonable return on their equity
- Creates a level playing field for all developers



Mixed-income housing in Cherry Hill, NJ, built through the township's inclusionary zoning program. *Source: Cherry Hill Township.*

Through inclusionary zoning, developers provide the capital for constructing the affordable units. In return, they receive entitlements structured so as to even out their cost, allowing them to make a reasonable return on their equity. The entitlements that municipalities provide can include a density bonus, unit size reduction, relaxed parking requirements, design flexibility, fee waivers or deductions, fee referrals, and fast-track permitting.

These entitlements generally do not cost significant public dollars or resources. The cost of the affordable units could be subsidized through an affordable housing trust fund or other source.

Inclusionary zoning should not create serious additional costs for the developer or the municipality. Ultimately, the purchasers of new market-rate homes shoulder any increase in home prices the developer may add to make up for lost profits. The amount of extra developer investment depends on the specific entitlements and structure of the inclusionary zoning ordinance.



Rendering of proposed mixed-income housing utilizing the inclusionary zoning ordinance in Mount Joy Borough, PA. *Source: Mount Joy Borough*

In order for inclusionary zoning to be appropriate for a municipality and fair to developers, it must respond to a clear and direct local need. Prior to establishing an inclusionary zoning ordinance, municipalities should first carry out a study to measure the need for affordable housing.

This study should:

- Compare a community's median income to the current affordability of its housing stock
- Record the number of residents below the median income, as compared to the number of affordable units available
- Map the community geographically to determine which areas have a shortage of affordable units
- Assess the rate of population increase, and the level of demand for additional service-sector jobs
- Determine the rate of housing price increases and make projections of future need

From these figures, a study can determine the required ratios of affordable homes and rental units needed to serve a local population, as well as which areas of the community need a greater capacity of affordable units. Pages 10 and 11 of this brochure list resources that contain standard figures and formulas used for calculating these ratios.



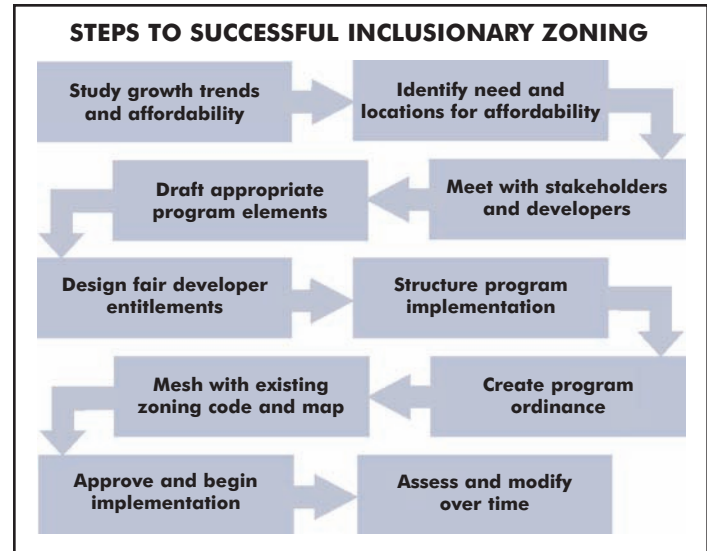
Mixed-income housing in Cherry Hill, NJ, built through the township's inclusionary zoning program. *Source: Cherry Hill Township.*

Inclusionary zoning is a flexible tool, with many options to custom tailor it to the needs of a particular community.

The elements of the ordinance should include:

- Reference to a study identifying actual need
- Mandatory or voluntary (opt-in) structure
- Description of developer entitlements (density bonus, unit size reduction, relaxed parking requirements, design flexibility, fee waivers or deductions, fee referrals, fast-track permitting, etc.)
- The minimum number of units in a development necessary to require compliance
- Number of units in the affordable set aside (e.g., one affordable unit for every 10 market-rate units)
- Whether the program will provide rental, homeownership or mixed types of affordable units
- The income target of the affordable population (e.g., 80% of median income)
- Term of years the unit will be required to remain at below-market price

- Whether there will be a fee exchange or off-site building option
- Requirements regarding the size, type, and appearance of affordable units, in relation to the market-rate units.



The chart above illustrates the study and ordinance-drafting process for developing an inclusionary zoning district. Source: DVRPC, 2006

Inclusionary zoning may be implemented as a voluntary program. In this case, there is no legal challenge because the developer may opt out. In the case of a mandatory ordinance, the courts have consistently upheld inclusionary zoning as long as it provides developer incentives, is connected to a legitimate local need, and pertinent enabling legislation exists.

There have been two cases in which the courts did not uphold mandatory inclusionary zoning ordinances.¹ In both cases, the ordinance did not provide for any developer incentives. Inclusionary zoning has been challenged on the grounds that it is an illegal government taking or that required fees are in fact illegal taxes. The courts have upheld that as long as there are substantial developer incentives, inclusionary zoning constitutes neither a taking nor illegal tax.²

Inclusionary zoning has also been challenged on the grounds that it is not the private market's role to support the costs of providing affordable housing. This argument has never been upheld in court.

California, Massachusetts, and New Jersey have statewide legislation encouraging municipalities to provide affordable housing options. New Jersey's 1985 Fair Housing Act emerged from the famous Mt. Laurel I & II New Jersey Supreme Court decisions.³ The Fair Housing Act enforces a constitutional requirement to provide affordable housing within the state. Numerous municipalities in New Jersey have responded to the Act by adding inclusionary zoning ordinances to their local codes.

References:

¹ Board of Supervisors of Fairfax County v. Degroff Enterprises, Inc. (Virginia Supreme Court, 1973)

Dacey v. Town of Barnstable (Massachusetts Superior Court, 2000).

² In re: Egg Harbor Associates (New Jersey Supreme Court, 1983)

Home Builders Association of Northern California v. City of Napa (California Court of Appeals, 2001)

³ Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 67 N.J. 151 (1975) (Mount Laurel I)

South Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983) (Mount Laurel II)

Inclusionary zoning is a tool used widely in communities across the country with great success. However, this success depends on local support from diverse stakeholders. Its implementation may include a process of public education to explain the need for affordable housing, and its role in building a stronger community and local economy.

Inclusionary zoning is not designed to set municipalities at odds with developers. It offers real entitlements that developers otherwise would not be able to obtain. Toward this end, municipalities must establish a positive and interactive relationship, in consultation with the development community, to draft an inclusionary zoning ordinance that everyone can work with.

Inclusionary zoning must respond to an identified need. It should be implemented with a long-term evaluation process for reassessing that need and reshaping the ordinance to respond to changes in population, housing market, and commercial sector growth.

Past uses of inclusionary zoning have proven that diversity and integration are keys to success. Communities flourish

when the affordable units are integrated with market-rate units and, at least from the exterior, are identical in appearance to the market-rate units.

Inclusionary zoning is an important tool, but not a singular solution. Municipalities should also look at other tools that can accompany inclusionary zoning to form a comprehensive affordable-housing and smart-growth development strategy.



Site plan of proposed mixed-income housing utilizing the inclusionary zoning ordinance in Mount Joy Borough, PA. *Source: Mount Joy Borough*

Mount Joy Borough, Lancaster County, PA

In August 2004, Mount Joy Borough unanimously adopted four zoning density bonuses, including a “workforce” bonus. The workforce bonus creates an opt-in structure, that allows as its entitlement a maximum of one extra unit per acre when at least 10% of the units (for sale or rental) are built as affordable housing for individuals making less than 80% of the county’s median income. Rental units must remain affordable for at least 15 years. Also, the workforce housing must be integrated with the market-rate housing.

The Florin Hill development, currently being built by Charter Homes, will be the first to use the workforce bonus, with 45 affordable units of the 450 total units. In Florin Hill, the market-rate units and the affordable units will look identical from the exterior.

This workforce bonus may be the first inclusionary zoning measure in the Commonwealth of Pennsylvania. It sets a positive precedent for how inclusionary zoning may be implemented in municipalities that are in the path of development.

Mount Joy’s ordinance is worded to specifically blend with the existing Traditional Neighborhood Development in the Borough, as defined in Section VII-A of the Pennsylvania Municipalities Planning Code. Encouraging higher density development in areas with a lack of diversity of housing types is supported by section 604(4) of the Code that calls for “various dwelling types encompassing all basic forms of housing.”



Rendering of proposed mixed-income housing utilizing the inclusionary zoning ordinance in Mount Joy Borough, PA. *Source: Mount Joy Borough*

Cherry Hill Township, NJ

In 1973, Cherry Hill Township amended its Zoning Code to create a classification called R-5 Residential Multifamily. With R-5, developers of rental and for-sale housing received a density bonus in exchange for providing 5% of all units for low/moderate-income households at reduced cost. The density bonus was substantial, rezoning areas from single-family-detached dwellings on 1/3- or 1/2-acre lots, to allow for a maximum density of 10 units per acre. The units held a deed restriction ensuring future sales only to low/moderate-income buyers.

The R-5 amendments were implemented prior to the now-famous Mt. Laurel I & II New Jersey Supreme Court decisions (1975/1983) that set the legal foundation for the New Jersey Fair Housing Act, institutionalizing a constitutional requirement to provide affordable housing within the state.

In 1982, the Township revised the R-5 Program, creating the Modest Priced Housing Program (MPH). The MPH solved a number of procedural problems that surfaced under R-5, and

also fixed a sale price on a much lower per-square-foot basis, making units far more affordable. In 1992, the Township increased the MPH set aside to 20% to comply with the Fair Housing Act, and set income limits and deed restrictions as established by the New Jersey Council on Affordable Housing (COAH). Currently there are 90 owner-occupied MPH units in the township.



Mixed-income housing in Cherry Hill, NJ, built through the township's inclusionary zoning program. *Source: Cherry Hill Township.*

American Planning Association (APA)

APA is the leading organization for planners across the nation. It publishes several periodicals each month on trends in the planning field. APA has published a number of articles and resources on inclusionary zoning, and a publication, *Zoning Practice*, focusing on zoning issues. For more information, visit www.planning.org or call 312-431-9100.

The Center for Housing Policy

The Center for Housing Policy is the research affiliate of the National Housing Conference. The Center works to broaden understanding of America's affordable housing challenges and examines the impact of policies and programs developed to address these needs. It has published several issues of its publication *New Century Housing* devoted to inclusionary zoning. For more information, visit www.nhc.org/housing or call 202-466-2121.

Council on Affordable Housing (COAH)

The Council on Affordable Housing (COAH) is a New Jersey State agency, created by the Fair Housing Act of 1985. COAH has produced numerous publications and resources on inclusionary zoning. For more information, visit www.state.nj.us/dca/coah or call 609-292-3000.

Business and Professional People for the Public Interest

BPI is a Chicago-based public interest law and policy center that has produced a comprehensive guide to the history, legality, and implementation of inclusionary zoning across the country, called "Opening the Door to Inclusionary Housing." For more information, visit www.bpichicago.org or call 312-641-5570.

Policy Link

Policy Link is an Oakland-based national nonprofit research, communications, capacity building, and advocacy organization. Its Equitable Development Toolkit provides a step-by-step guide to establishing an inclusionary zoning ordinance, with links to various state and local ordinances. For more information, visit www.policylink.org or call 510-663-2333.

"Affordable Housing Strategies." Smart Growth Gateway.
www.smartgrowthgateway.org

"The Fair Housing Act." N.J.S.A. 52:27 D-301. State of New Jersey.

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French, Chanin. "New Jersey Court Requires Good Faith Negotiations Prior to Bringing Mt. Laurel Litigation." *Practicing Planner*. American Planning Association. Winter 2004.

Pennsylvania Municipalities Planning Code. Act of 1968, P.L.805, No.247. Commonwealth of Pennsylvania.

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Created in 1965, the **Delaware Valley Regional Planning Commission (DVRPC)** is an interstate, intercounty and intercity agency that provides continuing, comprehensive and coordinated planning to shape a vision for the future growth of the Delaware Valley region. The region includes Bucks, Chester, Delaware, and Montgomery counties, as well as the City of Philadelphia, in Pennsylvania; and Burlington, Camden, Gloucester and Mercer counties in New Jersey. DVRPC provides technical assistance and services; conducts high priority studies that respond to the requests and demands of member state and local governments; fosters cooperation among various constituents to forge a consensus on diverse regional issues; determines and meets the needs of the private sector; and practices public outreach efforts to promote two-way communication and public awareness of regional issues and the Commission.



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